



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 22, 1993

OR93-022

Ms. Georgia D. Flint
Commissioner of Insurance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

Dear Commissioner Flint:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 18127.

The Texas Department of Insurance (the department) received an open records request for its files on Transport Life Insurance Company and Keith Wood Agencies, Inc. (the insurance agencies). You state that all but one of the department's files on these companies consist of materials in the possession of the Insurance Fraud Unit of the Department of Insurance. Section 5(a) of article 1.10D of the Insurance Code provides that materials "acquired by the department [and] relevant to an inquiry by the insurance fraud unit" are not public records "for as long as the commissioner considers reasonably necessary to complete the investigation, protect the person under investigation from unwarranted injury, or serve the public interest."

In enacting section 5(a) of article 1.10D, the Legislature chose to grant the Commissioner, rather than the Attorney General, the authority to decide if the requested information is confidential. You have deemed the documents at issue in this request as confidential in accordance with section 5(a). Accordingly, such materials are confidential, and are exempt from disclosure under section 3(a)(1) of the Open Records Act.


You contend that the remaining records pertaining to the insurance agencies come under the protection of section 3(a)(3) of the Open Records Act because the records relate to reasonably anticipated litigation which will result from the department's investigation of the agencies. To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 3(a)(3); these records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).

We also note that because section 3(a)(3) protects only information that is relevant to the litigation, this section is inapplicable to documents that the presiding judge has ruled undiscoverable because they lack relevance to the lawsuit. Finally, the applicability of section 3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

If you have questions about this ruling, please refer to OR93-022.

Yours very truly,


Rebecca L. Payne
Assistant Attorney General
Opinion Committee

RLP/JET/rwp/lmm

Ref.: ID# 18127
ID# 18208

Enclosures: Submitted documents

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